

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

November 16, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

REQUEST FOR THE BOARD TO CONSIDER AN AFTER-THE-FACT
RENEWAL OF MOORING PERMIT NO. O 6130 ISSUED TO MR. RONALD
NELSON FOR BERTH NO. 496 AT ALA WAI SMALL BOAT HARBOR

APPLICANT:

Mr. Ronald Nelson

LEGAL REFERENCE:

Section 200-10, Hawaii Revised Statutes, Section 13-231-5, Hawaii Administrative Rules

PURPOSE:

To have the Board consider whether to grant an after-the-fact renewal of mooring permit no. O 6130 to Mr. Ronald Nelson for berth no. 496 at Ala Wai Small Boat Harbor

REMARKS:

Mr. Ronald Nelson has had a mooring permit in the Ala Wai small boat harbor since 1996. On October 11, 2006, Mr. Ronald Nelson was issued mooring permit no. O 6130 for use of berth no. 496 at Ala Wai Small Boat Harbor (Ala Wai SBH). **(Exhibit A)** The term of the permit was for one year ending on October 19, 2007. On July 1, 2007 Mr. Nelson was sent a letter by the Div. of Boating and Ocean Recreation (DOBOR), via certified mail, reminding him that his permit would expire in approximately three months and that he should be sure to renew his permit prior to the expiration date and advising him that failure to renew his permit prior to the expiration date would result in the termination of his permit. **(Exhibit B)** DOBOR received a signed return receipt for the reminder letter that was sent to Mr. Nelson. **(Exhibit C)** The expiration date of the permit is also printed on the monthly billing statement which Mr. Nelson receives from DOBOR.

Mr. Nelson failed to renew his mooring permit on or before October 19, 2007. On October 20, 2007 Mr. Nelson came in to the DOBOR office at the Ala Wai SBH seeking

to renew his permit. He was denied the right to renew his permit by the DOBOR staff as his permit had expired the day before.¹ Mr. Nelson has requested that he be allowed to renew his permit after the permit expiration date.²

Hawaii Revised Statutes (HRS) §200-9 provides that State small boat harbors are constructed, maintained, and operated for the purposes of recreational boating activities, landing of fish, and commercial vessel activities. HRS §200-9 further provides that "to implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor, and which are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at such harbor or use any of its facilities."

HRS §200-10 provides that no person shall moor in a state small boat harbor without first obtaining a use permit from the department of land and natural resources and without being the owner of the vessel. To implement this section, in part, the Board adopted Hawaii Administrative Rules (HAR), §13-231-5.

HAR §13-231-5 states "The department may issue or renew a use permit for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall *automatically terminate*. No use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with." [emphasis added]

When a mooring permit is coming up for renewal, the division sends an advance notice, via certified mail, approximately ninety days in advance of the expiration date to remind the permittee of the expiration date of the mooring permit and to remind them that they need to submit a renewal application and vessel inspection to the harbor office prior to the expiration of the permit. Over the years, the division has received renewal applications for mooring permits after the expiration dates stated on the permits. The division in the past has informed these late renewal applicants that since the use permits were not renewed prior to the expiration date the permits had automatically terminated and that that they could no longer renew the permits. This rule has been applied uniformly throughout the state small boat harbors despite the fact that some of these late permittees were long time residents of the harbor, paid their fees on time, and had been good tenants but just failed to renew their mooring permits in a timely manner. Although the permittees have asked in the past to be granted a grace period to allow them to submit the required documents, the division did not believe it had the authority to do so under HAR §13-231-5 and as such denied all such requests.

¹ Mr. Nelson appears to have been compliant with all other requirements for renewal of his mooring permit. There is currently approximately 900 people on the waiting list of people who would like to obtain a mooring permit in the Ala Wai SBH.

² Mr. Nelson has been allowed to remain in his slip under a temporary use permit until this matter is resolved by the Board. Pursuant to HAR §13-231-24, Mr. Nelson's slip has already been offered to the next person on the waiting list.

The division would like the Board to consider whether the Board can and will allow Mr. Nelson, and other similarly situated permittees in the future, to renew his use permit after the expiration date provided in his use permit. If the Board finds that it can and would like to allow for late renewals of use permits, the division asks that the Board provide guidance as to how long after the expiration of a use permit will the Board allow a permittee to renew its permit.

RECOMMENDATIONS:

That the Board:

1. Consider and decide whether they can and will allow Mr. Nelson to renew his mooring permit after the expiration date provided for in mooring permit no. O 6130; and
2. Consider whether other similarly situated permittees moored within a State small boat harbor facility who fail to renew their mooring permits by the expiration period stated on the mooring permit, but who are otherwise compliant with renewal requirements, can and will be allowed to renew their mooring permits after the stated expiration date. If the Board decides that late renewals will be allowed, the Board should instruct the division as to how many days after the expiration date of a permit will a permittee be allowed to renew its permit.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



Laura H. Thielen
Chairperson and Member

ALA WAI OCT11'06 13:29

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING & OCEAN RECREATION

WS

Type of Agreement:

MOORING PERMIT

No. **O 6130**

Initial

New

Revision

Other

Account No. **0832R000680**Date **OCT. 11, 20 06**This permit is for a berth in the **ALA WAI** Boat Harbor at Berth No. **0496** for boat withRegistered/Documented No. **532403** Name of Boat **SPLENDOR** Length (overall) **65'** Length on Deck **65'**

I agree to the following terms, conditions, and charges:

- I agree to abide by all rules promulgated by the Department of Land and Natural Resources and conditions of this permit. Rules are available for purchase at District and Harbor offices.
- The Boat will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
- The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

(1) Mooring	\$ <u>266.50</u>	(4) Security Deposit	\$ _____
(2) Electricity	\$ _____	(5) Other	\$ _____
(3) Gear Locker	\$ <u>5.50</u>	(6) Monthly Payment	\$ <u>272.00</u>
- A mooring permit may be cancelled by a boat owner upon 30 days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbors Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
- This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
- This Mooring Permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules).
- The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or to any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents, and employees from any and all manner of actions, liability, and claims arising out of or incident to said mooring, including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
- This mooring permit shall not exceed one (1) year from 10/19/06 and the mooring privilege under this permit terminates on 10/19/07.
(Date) (Date)

A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.

- The department retains the right to not issue a new permit after the termination date of this permit.

Permittee Signature

NELSON, RONALD R.

Printed Name of Permittee

1650 ALA MOANA BLVD. #1613

Home Address

HONOLULU, HI 96815

City

State

Zip

941-9663(R)781-9639(B & C)

Phone: Home

Work

APPROVED:

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

By

ALA WAI OCT11'06 13:29

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

ADDENDUM NO. 1 TO REGULAR MOORING PERMIT NO. O-6130

Notice is hereby given that violation of the following Hawaii Administrative Rules (HAR), statutes, regulations and policies may result in the termination or non-renewal of a regular mooring permit. You are responsible for complying with all the rules and regulations of this facility, not just the ones listed below. Copies of the rules are available for purchase at our office.

1. No person shall store, place, leave, deposit, or abandon any vessel, structure, supplies, material, equipment, object or substance on catwalk, piers, sidewalks, roads, parking areas or any other public areas. HAR 13-232-41
2. Boat owner is required to report change of ownership, and address in writing within 7 days. HAR 13-231-15
3. A regular mooring permit and related use permits issued to a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days, unless the holder of the permit submits an application furnished by the department. HAR 13-231-11
4. Excessive noise or failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced. HRS 711-1101 (1b)(2)
5. Tampering with or damaging state property is prohibited. HAR 13-232-56
6. Littering of land areas, water and/or polluting water is prohibited. HAR 13-232-6, 13-232-7
7. Working on vessels which creates excessive noise or leaves deposits of any kind on neighboring vessels or state property is prohibited. HAR 13-232-8
8. Allowing your regular mooring permit to expire without acquiring a new regular mooring permit. HAR 13-231-5
9. Staying, vacationing or living aboard a vessel in violation of the small boat harbor rules is prohibited. Staying or vacationing aboard the vessel is permitted when our office is notified in writing prior to staying aboard, and the total number of days per week/year is not exceeded.

Those limits are as follows:

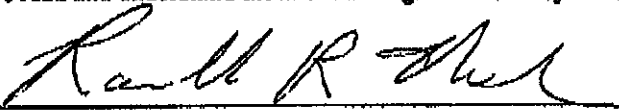
Stay aboard is any 3 nights or less per calendar week, not to exceed 60 days per calendar year.

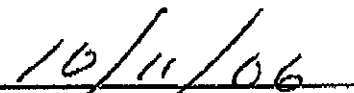
Vacation is more than 3 days in a calendar week, not to exceed 30 days per calendar year.

Living aboard requires a liveaboard permit and additional monthly fees. HAR 13-231-28

10. Commercial vessel activity is prohibited. A commercial vessel is any vessel engaged in any trade or business, or is registered with the state or documented by the United States Coast Guard for commercial use. HAR 13-231-55

I have read and understand the above and agree to abide by all rules, regulations, and policies of the department.


Signature


Date

LINDA LINGLE
GOVERNORCHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCESSTATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES BOR-OA 0003.08
DIVISION OF BOATING AND OCEAN RECREATIONALA WAI SMALL BOAT HARBOR
1651 ALA MOANA BOULEVARD
HONOLULU, HAWAII 96816
PHONE: (808) 973-8727
FAX: (808) 973-8739

JULY 1, 2007

RONALD R. NELSON

1650 ALA MOANA BLVD. #1613
HONOLULU, HI 96815

Dear RONALD R. NELSON

Subject: MOORING PERMIT EXPIRATION - OCTOBER, 2007

Your permit to moor **SPLENDOR**, 532403 in berth 0496 at the Ala Wai Boat Harbor will expire on 10-19-2007. Failure to obtain a mooring permit or complete a vessel inspection and submit a completed mooring permit application prior to your expiration date shall result in your permit not being re-issued, your account shall be closed, and you may be required to remove your vessel from the harbor and/or obtain a temporary mooring permit, if space is available. If your account is closed, the berth will be offered to the next eligible applicant on the waitlist. In addition, if your account is closed and the vessel remains at the Ala Wai Harbor, you will be charged the higher rate per Section 13-234-5(e), Hawaii Administrative Rules, for vessels mooring without a permit and the vessel becomes subject to impoundment. Prior to the issuance of a new mooring permit, the following must be completed; a) the slip area must be free from unauthorized structures, stored items & alterations to the facility; b) your vessel must pass a vessel inspection, call the office to schedule an appointment; c) all paperwork must be completed and signed; d) all fees paid; e) in compliance with all administrative rules.

A copy of a blank application for boat harbor agreement is enclosed for your convenience. As the permittee, you must come to our office and sign your 2007 - 2008 mooring permit. Please bring with you the completed application, your vessel's current Certificate of Documentation or Registration and a picture I.D. For your information, anyone who has an overdue balance on their account is not eligible for a mooring permit. Any overdue balances must be cleared before a mooring permit can be issued.

Our office is open Tuesday through Saturday from 7:45 am to 4:00 pm.

Very truly yours,

Meghan Statts, Oahu District Manager

Certified Mail - Return Receipt Requested

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>M. Cruz</i></p>	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
BOR-OA 0003.08 10/07 MP RONALD NELSON 1650 ALA MOANA BLVD. #1613 HONOLULU, HI 96815		M. Cruz	7/12/07
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
ALA WAI JUL 5'07 18:31		3. Service Type	
		<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt	
7006 2760 0005 1399 1606		102895-02-11-1840	